

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MAYA PYSKATY,

Plaintiff,

Case No. 15-CV-1600 (JCM)

v.

WIDE WORLD OF CARS, LLC d/b/a

WIDE WORLD BMW;

BMW BANK of NORTH AMERICA;

Defendants.

JOINT PRE-TRIAL ORDER

Per the Court's March 26, 2019 Amended Trial Order (Docket No. 124), the parties submit this Joint Pre-Trial Order:

I. PROPOSED WITNESSES AND EXHIBITS

Plaintiff's Witnesses:

Will Call

1. Maya (Sieber) Pyskaty (Plaintiff)
2. Stephen T. Pyskaty (Plaintiff's spouse)
3. Phillip J. Grismer (expert witness)
4. Michael Trontz (adverse party/hostile witness)
5. Michael Jackson (adverse party/hostile witness)
6. William Ace (adverse party/hostile witness)

May Call

7. Lawrence Bikles
8. Trudy Boulia (adverse party/hostile witness)
9. Jared Catanucci (adverse party/hostile witness)
10. Brian Sorce (adverse party/hostile witness)
11. Howard Cohen
12. Lidia Polanco

Defendant Wide World of Cars, LLC's Witnesses:

Will Call

1. Michael Trontz (General manager of WWC)

2. Michael Jackson (Service manager of WWC)
3. Brian Sorce (current manager of WWC)
4. John Saliani (appraiser and automotive paint expert)

May Call

5. “Subpoena Witness” from Multistate Restoration, Inc. (regarding sales documents of original lease/sale)
6. “Subpoena Witness” from Wagner BMW of Shrewsbury (regarding sales documents of original lease/sale)

Defendant BMW Bank of North America’s Witnesses:

Will Call

1. Efrain Lopez (technical support engineer for BMW of North America)

May Call

2. “Subpoena Witness” from BMW of North of America, LLC (for the topic of vehicle history and CPO program)
3. Corporate representative of BMW Bank

Plaintiff’s Exhibits:

(Vehicle refers to a 2010 BMW 750 LXI with VIN No. WNAKC8C54ACY68053)

1. Advertisement by Wide World of Cars, LLC for Certified Pre-Owned BMWs dated June 25, 2014
2. Limited Lemon Law Warranty – Used Motor Vehicle
3. Ourisman Chevrolet of Bowie, Inc. records for the Vehicle
4. Wagner BMW of Shrewsbury records for the Vehicle
5. Multistate Restoration, Inc.’s Rhode Island Secretary of State registration
6. AutoBody Connection’s Inspection for the Vehicle
7. Vehicle records from Wide World of Cars, LLC (Exhibit A to WWC’s Production)
8. Vehicle records from Wide World of Cars, LLC (WWC’s Exhibit B to WWC’s Production)
9. Vehicle records from Dealerspeed/JCT Warranty website
10. Vehicle Solar Tire & Automotive Services, Inc. Invoices
11. Vehicle proof of insurance and insurance billing history
12. Letter to Wide World of Cars, LLC from Schlanger & Schlanger, LLP dated July 23, 2014
13. Letter to Schlanger & Schlanger, LLP from Wide World of Cars, LLC dated August 7, 2014
14. Letter to Wide World of Cars, LLC from Schlanger & Schlanger, LLP dated August 21, 2014
15. CARFAX for Vehicle dated October 31, 2013 (from Plaintiff’s first production, including notes)

16. Auto Check Report for Vehicle dated June 12, 2014
17. Complaint in *Cohen v. New Country Motor Group, Inc.*, Index No. 034128/2014 (N.Y. Sup. Ct. Rockland Cty.)
18. Affidavit of Arthur G. Glynn dated August 5, 2016 in *Cohen v. New Country Motor Group, Inc.*, Index No. 034128/2014 (N.Y. Sup. Ct. Rockland Cty.)
19. Affidavit of Howard Cohen dated August 5, 2016 in *Cohen v. New Country Motor Group, Inc.*, Index No. 034128/2014 (N.Y. Sup. Ct. Rockland Cty.)
20. Affidavit of R. Scott LaFazia dated August 5, 2016 in *Cohen v. New Country Motor Group, Inc.*, Index No. 034128/2014 (N.Y. Sup. Ct. Rockland Cty.)
21. FOIL Responses from New York State Attorney General
22. FOIL Responses from New York State Department of Motor Vehicles
23. Better Business Bureau third-party subpoena responses
24. Pictures of Vehicle from Stephen Pyskaty mobile telephone
25. Real Bimmer Parts forum posts
26. 7 Post forum posts

Defendants WWC and BMW Bank's Exhibits:

1. Plaintiff's Amended Summons & Complaint dated July 27, 2015
2. CARFAX Report dated November 1, 2013
3. CARFAX Report dated June 10, 2014 (for cross)
4. Coverage Document Signed by Plaintiff
5. All photographs ~~(and video)~~ taken by expert Efrain Lopez during his inspection
6. All photographs taken by expert John Salianni of Universal Appraisal Company
7. Warranty vehicle inquiry dated October 19, 2013
8. Wide World accounting and work order dated October 16, 2013 invoice
9. Wide World accounting and work order
10. Wide World print out with Mannheim Appraisal for subject vehicle dated July 7, 2013
11. All photographs taken by Wide World of subject vehicle prior to its purchase by Plaintiff
12. Warranty vehicle inquiry dated June 10, 2014
13. Wide World's service sheet and key data sheets for subject vehicle of October 10, 2013
14. Vehicle delivery checklist signed by plaintiff (different from stipulated exhibit #10)
15. Wide World's customer checks/declines signed by Plaintiff
16. Wide World accounting and work order #236341 dated October 16, 2013 (for omissions testing)
17. Wide World account and work order #236209 dated October 16, 2013 (CPO inspections, floor mats installation, mounting, and balancing tires)
18. Operation Report printout dated October 14, 2013
19. Wide World's BMW Kinematics Diagnoses System dated October 15, 2013 (wheel alignment)
20. BMW Bank's Notice of Subpoena to BMW of North America to produce documents and/or information indicating whether or not the subject vehicle was

- subject to commercial usage prior to October 31, 2013
21. Plaintiff's email dated January 29, 2014 from 7 Post forum posts
 22. Subpoenaed documents regarding original sale/lease of the subject vehicle

II. OBJECTIONS TO WITNESSES AND EXHIBITS

Witnesses

1. Plaintiff objects to the calling of the following witnesses who were not disclosed during discovery:
 - (a) "Subpoena Witness" from Multistate Restoration, Inc. (regarding sales documents of original lease/sale)
 - (b) "Subpoena Witness" from Wagner BMW of Shrewsbury (regarding sale documents of original lease/sale)
 - (c) "Subpoena Witness" from BMW of North of America, LLC (for the topic of vehicle history and CPO program)
 - (d) Corporate representative of BMW Bank
2. Defendants object to Plaintiff's witnesses 7-9, 11-12 on the ground that they do not have relevant bearing on the case.

Exhibits

1. Plaintiff objects to Defendants' Exhibit Nos. 3, 7-9, 12, 16, 20, 22 to the extent these documents were not produced during discovery and Plaintiff has had no opportunity to review them much less conduct discovery about them.
2. Defendants object to item numbers 1, 2, 4-26 in Plaintiff's exhibits as irrelevant and/or on the ground that such evidence was not produced by Plaintiff during discovery.

III. STIPULATIONS TO FACTS, WITNESSES, OR EXHIBITS

Facts

1. Defendant Wide World of Cars, LLC d/b/a Wide World BMW ("WWC") is a domestic limited liability company formed under the laws of New York located in Rockland County, New York.
2. WWC is a BMW automobile dealership located in Spring Valley, New York.
3. WWC was a participant in the CPO Program in October 2013.
4. The Certified Pre-Owned by BMW Center Operation Manual ("CPO Manual") dated March 2013 was the version in effect in October 2013.
5. The CPO Manual contains a Center Participation Agreement for Authorized BMW Passenger Car and BMW SAV Centers Only.
6. WWC offered the Vehicle for sale as CPO.
7. On October 31, 2013, WWC sold Ms. Pyskaty the Vehicle.

8. As part of the purchase transaction, Ms. Pyskaty and WWC entered into the BMW Financial Services Motor Vehicle Retail Installment Contract – New York.
9. At the time of the sale on October 31, 2013, WWC provided Ms. Pyskaty with a Buyers Guide.
10. The Buyers Guide identified the Vehicle by VIN, model number, model year, and dealership.
11. The Buyers Guide stated that a Certified Pre-Owned Limited Warranty applied to the Vehicle.
12. At the time of the sale on October 31, 2013, WWC provided Ms. Pyskaty with a CARFAX Vehicle History report dated October 31, 2013.
13. WWC had CARFAX Vehicle History reports dated October 7, 2013 and October 10, 2013 in its internal files.
14. After the sale of the Vehicle to Ms. Pyskaty, WWC assigned the BMW Financial Services Motor Vehicle Retail Installment Contract – New York to BMW Bank.
15. The monthly payment amount of the loan for the Vehicle is \$1,030.38, including a rollover of a prior loan.
16. Ms. Pyskaty paid a down payment on the Vehicle of \$2,000 at the time of the purchase.

Plaintiff's Proffered Facts to Which Defendants Will Not Stipulate:

1. WWC is the only BMW automobile dealership located in Spring Valley, New York.
2. In 2013, WWC sold approximately 2,700 vehicles per year.
3. In 2013, WWC sold approximately 700 vehicles that were Certified Pre-Owned ("CPO").
4. Of the 700 pre-owned vehicles sold by WWC in 2013, WWC sold approximately 98% of the vehicles to consumers.
5. WWC has participated in the Certified Pre-Owned by BMW Program ("CPO Program") since at least the year 2010.
6. The CPO Manual does not define which constitutes an "abused or neglected" vehicle.
7. The CPO Manual contains a blank template containing the 8 Steps to Certification.
8. The CPO Manual contains a blank template entitled Statement of Certification for CPO vehicles.
9. CPO Program participants are specifically barred from enrolling ineligible vehicles in the CPO Program.
10. The CPO Manual contains a Certified Pre-Owned by BMW Vehicle Inspection Checklist ("VIC").

11. The basic header data in the VIC includes a line beginning "SOURCE" with individual checkboxes accompanying the following choices: BMW FS OFF-LEASE, OTHER OFF-LEASE, TRADE-IN, AUCTION, and OTHER.
12. WWC purchased the Vehicle later sold to Maya Pyskaty from Rockland Motors & Sales on October 5, 2013.
13. WWC purchased the Vehicle pursuant to a Purchase Agreement for which it agree to pay the seller, identified as Congers Auto Sales, the sum of \$39,500.
14. WWC appraised the value of the Vehicle at \$39,500 on October 7, 2013.
15. As part of the CPO certification process in 2013, WWC assigned the responsibility for completion of Section 1 of the VIC for CPO Vehicles to Isabelle Torres.
16. Prior to working as a receptionist for WWC, Ms. Torres had not worked at other auto dealerships.
17. Acting as a Technician, Mr. Ace inspected the Vehicle on behalf of WWC for CPO certification.
18. Mr. Ace signed the VIC for the Vehicle.
19. Mr. Jackson signed the VIC for the Vehicle.
20. On October 31, 2013, the Vehicle had multiple written indicators affixed to it reflecting that it was a CPO automobile, including a Monroney Label indicating CPO and Windshield Clings stating "Certified Pre-Owned by BMW."
21. The Buyers Guide stated that a limited warranty applied to the Vehicle.
22. WWC provided a VIC of the Vehicle to Ms. Pyskaty that indicated that the Vehicle did not have a disqualifying CARFAX or AutoCheck report.
23. WWC regularly advertises and markets CPO vehicles on the Internet to consumers.

Witnesses

The parties do not object to the calling of the following witnesses:

1. Maya (Sieber) Pyskaty (Plaintiff)
2. Stephen T. Pyskaty (Plaintiff's Spouse)
3. Phillip J. Grismer (expert witness)
4. Michael Trontz (Former General Manager of WWC)
5. Michael Jackson (Service Manager of WWC)
6. Brian Sorce (Current Manager of WWC)
7. John Saliani (Appraiser and automotive paint expert)
8. William Ace
9. Efrain Lopez (technical support engineer for BMW of North America)

Exhibits

The parties stipulate to the admissibility of the following exhibits:

1. Certified Pre-Owned by BMW Center Operations Manual dated March 2013
2. BMW CPO Process and Procedure Manual by Wide World of Cars, LLC dated September 14, 2010 and revised August 14, 2013
3. Conger's Auto Sales/Rockland Motors purchase documents for the Vehicle
4. Vehicle Pre-purchase Appraisal by Wide World of Cars, LLC dated October 7, 2013
5. BMW Maintenance Program Upgrade Agreement signed by Plaintiff
6. Certified Pre-Owned Vehicle Inspection Checklist dated October 10, 2013 and signed on October 16, 2013 for the Vehicle
7. BMW Financial Services Motor Retail Installment Contract – New York dated October 31, 2013 for the Vehicle
8. Vehicle Purchase Order dated October 31, 2013
9. Invoice ID No. 121675 for the Vehicle
10. New Country Motor Car Group Vehicle Delivery Checklist
11. Wide World of Cards, LLC registration with New York State Department of State
12. BMW Bank of North America registration with Utah Secretary of State
13. Buyer's Guide for the Vehicle
14. 8 Steps to Certified Pre-Owned BMW Vehicle Program Compliance dated October 9, 2013 and October 16, 2013 for the Vehicle
15. Statement of Certification for a Certified Pre-Owned BMW dated October 16, 2014 for the Vehicle
16. New Jersey Certificate of Title for the Vehicle
17. DCS Net Warranty Vehicle Inquiry for the Vehicle
18. Vehicle service/repair records from Open Road of Newton
19. Vehicle service/repair records from Paul Miller
20. Vehicle account statements with BMW Bank
21. CARFAX dated October 7, 2013
22. CARFAX dated October 10, 2013
23. CARFAX dated October 31, 2013 (with redactions of handwritten notes)
24. BMW Financial Services Consumer Credit Application
25. Plaintiff's complaint and service/consumption log documents for the Vehicle
26. Vehicle Purchase Information Screen Shot

IV. WITNESS AVAILABILITY

The parties agree to make the following witnesses available throughout the trial upon reasonable notice:

1. Maya Pyskaty
2. Stephen T. Pyskaty
3. Phillip J. Grismer
4. Michael Trontz
5. Michael Jackson
6. Brian Sorce
7. John Saliani
8. Efrain Lopez
9. William Ace (may require subpoena or may be unavailable)

The following witnesses may need to be subpoenaed:

1. Lawrence Bikles
2. Trudy Boulia
3. Jared Catanucci
4. Howard Cohen
5. Lidia Polanco
6. "Subpoena Witness" from Multistate Restoration, Inc. (regarding sales documents of original lease/sale of the subject Vehicle
7. "Subpoena Witness" from Wagner BMW of Shrewsbury (regarding sales documents of original lease/sale of the subject Vehicle
8. "Subpoena Witness" from BMW of North America, LLC (for the topic of vehicle history and CPO Program)
9. Corporate representative of BMW Bank

**V. INCLUSION OF DEPOSITION TESTIMONY OR VIDEO TESTIMONY
(IN LIEU OF LIVE TRIAL TESTIMONY)**

None assuming Defendants make William Ace available for trial or Mr. Ace is subject to the Court's subpoena power.

**VI. ELECTRONIC EQUIPMENT REQUIRED AT TRIAL (COURT ISSUED
ORDER PERMITTING SUCH)**

ELMO, Projector, Laptop Computers, Tablets, Power Cabling, Laptop, iPad, Phones

VII. MOTIONS IN LIMINE (WITHOUT GOING INTO THE MERITS OF THE SAME)

1. Plaintiff's motion to preclude testimony of Saliani and/or any testimony or reference with respect to any material, observations, or conclusions contained in unserved pages of expert report.
2. Plaintiff's motion to preclude the use of any documents furnished after the close of discovery by Defendant Wide World of Cars, LLC
3. Plaintiff's motion to preclude "Subpoena Witness" from Multistate Restoration, Inc. (regarding sales documents of original lease/sale of the subject Vehicle; "Subpoena Witness" from Wagner BMW of Shrewsbury (regarding sales documents of original lease/sale of the subject Vehicle; "Subpoena Witness" from BMW of North America, LLC (for the topic of vehicle history and CPO Program); and Corporate representative of BMW Bank.
4. Defendants' motion to preclude exhibits and witnesses pertaining to *Cohen v. New Country Motor Group, Inc.*
5. Defendants' motion to preclude documents not yet disclosed by Plaintiff.
6. Defendants' motion to preclude FOIL documents.

Dated: May 9, 2019

/s/ Evan S. Rothfarb

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SO ORDERED:

Dated: _____, 2019.

Magistrate Judge Judith C. McCarthy